

**RESOLUTION NO. 18-01**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AVALON, CALIFORNIA, SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF AVALON AN INITIATIVE MEASURE AUTHORIZING IMPOSITION OF A SPECIAL TAX ON PASSENGERS ARRIVING TO OR DEPARTING FROM THE CITY OF AVALON BY CRUISE SHIP, FERRY, OR AIRCRAFT, TO RAISE REVENUE FOR THE IMPROVEMENT OR REPLACEMENT OF THE CATALINA ISLAND MEDICAL CENTER AND COSTS ASSOCIATED THERETO, AT THE REGULAR MUNICIPAL ELECTION TO BE HELD APRIL 10, 2018, AND SETTING RULES FOR ARGUMENTS FOR AND AGAINST SAID MEASURE, AND TAKING OTHER ACTIONS RELATING THERETO**

**WHEREAS**, pursuant to authority provided by statute, a petition has been filed with the City Council of the City of Avalon, seeking to enact an initiative measure/ordinance which would, among other things, authorize a special tax to be imposed on passengers arriving to or departing from the City of Avalon by cruise ship, ferry, or aircraft, for the purpose of funding improvements to and/or replacement of the Catalina Island Medical Center (the "Center"), as well as certain costs related to the financing and administration of such improvements and/or replacements (the "Measure" or "Ordinance"); and

**WHEREAS**, Section 9215 of the California Elections Code provides that a local initiative measure may qualify for the ballot if a petition is filed with the City containing the signatures of at least ten percent (10%) of the number of registered voters of the City; and

**WHEREAS**, the City Clerk has certified that the form of the petition complies with California law and, based upon an examination of voter registration records, that the petition is signed by the requisite number of voters to qualify the Measure for the ballot under the California Elections Code; and

**WHEREAS**, the City Council desires to place the Measure on the next regular municipal election to be held on April 10, 2018; and

**WHEREAS**, the specific terms of the Measure/Ordinance are attached hereto as Exhibit "A" and by this reference made an operative part hereof, and in accordance with all applicable laws.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AVALON, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:**

**SECTION 1. Recitals.** The City Council of the City hereby finds and determines that the foregoing recitals are true and correct, are incorporated herein and by this reference made an operative part hereof.

**SECTION 2. Submission of Ballot Measure.** The City Council of the City, pursuant to its right and authority as contained in California Elections Code section 9215, hereby orders the

Measure/Ordinance attached hereto as Exhibit "A" to be submitted to the qualified voters of the City at the Regular Municipal election to be held on Tuesday, April 10, 2018. The proposed Measure/Ordinance shall be in the form attached hereto as Exhibit "A" to this Resolution and is incorporated by this reference as if fully set forth herein.

**SECTION 3. Ballot Measure.** The City Council, pursuant to its right and authority, does hereby order that the Measure shall be presented and printed upon the ballot submitted to the qualified voters in the manner and form set forth in this Section 3. On the ballot to be submitted to the qualified voters at the election to be held at the Regular Municipal election on Tuesday, April 10, 2018, in addition to any other matters required by law, there shall be printed substantially the following:

"For the sole purpose of improving or replacing the Catalina Island Medical Center and related administration and financing costs, shall the Avalon Municipal Code be amended to impose a one dollar (\$1.00) special tax per passenger arriving to or departing from the City of Avalon by cruise ship, ferry or aircraft, generating approximately \$1,900,000 annually in funding for the Medical Center, until ended by voters?"	YES	
	NO	

**SECTION 4. Election Procedures.**

- A. The ballots to be used at the election shall be in the form and content as required by law.
- B. In accordance with Section 10002 of the Elections Code, the Board of Supervisors of Los Angeles County is hereby requested to consent to having the Registrar of Voters render such election services to the City of Avalon as may be requested by the City Clerk of said City, the County of Los Angeles to be reimbursed in full for such services as are performed.
- C. The election services which the City of Avalon requests the Registrar of Voters, or such other official as may be appropriate, to perform and which such officer is hereby authorized and directed to perform, if said Board of Supervisors consents, may include: the preparation, printing and mailing of sample ballots and polling place cards; the establishment or appointment of precincts, polling places, and election officers, and making such publications as are required by law in connection therewith; the furnishing of ballots, voting booths and other necessary supplies or materials for polling places; and the performance of such other election services as may be requested by the City Clerk.
- D. The City Clerk is authorized, instructed and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies, equipment and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

- E. The polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until seven o'clock p.m. of the same day when the polls shall be closed, pursuant to Election Code §10242, except as provided in §14401 of the Elections Code of the State of California.
- F. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding municipal elections in the City.
- G. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election, in time, form, and manner as required by law.
- H. All ballots shall be tallied at a central counting place and not at the precincts.
- I. The City Clerk of the City of Avalon, or at the City Clerk's request, the Los Angeles County Registrar of Voters, is hereby authorized to canvass the returns of said election.
- J. The City Clerk of the City of Avalon shall receive the canvass as it pertains to the election on the Measure, and shall certify the results to the City Council, as required by law.

**SECTION 5. Arguments and Analysis.**

- A. The City Council authorizes (i) the City Council or any member(s) of the City Council, (ii) any individual voter eligible to vote on the above Measure, (iii) a bona fide association of such citizens or (iv) any combination of voters and associations, to file a written argument in favor of or against the City Measure, in accordance with Article 4, Chapter 3, Division 9 of the Elections Code of the State of California and may change the argument until and including **January 26, 2018**, after which no arguments for or against the Measure may be submitted to the City Clerk. Arguments in favor of or against the Measure shall each not exceed 300 words in length. Each argument shall be filed with the City Clerk, signed, and include the printed name(s) and signature(s) of the author(s) submitting it, or if submitted on behalf of an organization, the name of the organization, and the printed name and signature of at least one of its principal officers who is the author of the argument.
- B. The City Clerk shall comply with all provisions of law establishing priority of arguments for printing and distribution to the voters, and shall take all necessary actions to cause the selected arguments to be printed and distributed to the voters.
- C. Pursuant to Section 9280 of the Elections Code, the City Council directs the City Clerk to transmit a copy of the measure to the City Attorney. The City Attorney shall prepare an impartial analysis of the Measure, not to exceed 500 words in length, showing the effect of the Measure on the existing law and the operation of the Measure. The City Attorney shall transmit such impartial analysis to the City Clerk, who shall cause the analysis to be published in the ballot pamphlet along with the

ballot Measure as provided by law. The impartial analysis shall be filed by the deadline set for filing of primary arguments as set forth in subsection (A) above. The impartial analysis shall include a statement indicating whether the Measure was placed on the ballot by a petition signed by the requisite number of voters or by the City Council. In the event the entire text of the Measure is not printed on the ballot, nor in the voter information portion of the sample ballot, there shall be printed immediately below the impartial analysis, in no less than 10-font bold type, the following: **“The above statement is an impartial analysis of Ordinance or Measure T. If you desire a copy of the ordinance or measure, please call the election official’s office at (310) 510-0220 and a copy will be mailed at no cost to you.”**

#### **SECTION 6. Rebuttals.**

- A. That pursuant to Section 9285 of the Elections Code of the State of California, when the Clerk has selected the arguments for and against the Measure which will be printed and distributed to the voters, the Clerk shall send copies of the argument in favor of the Measure to the authors of the argument against, and copies of the argument against to the authors of the argument in favor. The authors or persons designated by them may prepare and submit rebuttal arguments not exceeding 250 words. The rebuttal arguments shall be filed with the City Clerk not later than **February 5, 2018**. Rebuttal arguments shall be printed in the same manner as the direct arguments. Each rebuttal argument shall immediately follow the direct argument which it seeks to rebut.
- B. That all previous resolutions providing for the filing of rebuttal arguments for City measures are repealed.
- C. That the provisions herein shall apply only to the election to be held on April 10, 2018, and shall then be repealed.

**SECTION 7. Placement on the Ballot.** The full text of the Ballot Ordinance/Measure will not be printed in the voter pamphlet, and a statement shall be printed in the ballot pursuant to Section 9223 of the Elections Code advising voters that they may obtain a copy of this Resolution, the Ballot Ordinance and/or Measure, at no cost, upon request made to the City Clerk.

**SECTION 8. Delivery of Resolution to County.** The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original resolutions. The City Council directs the City Clerk to deliver copies of this Resolution, including the Ballot Ordinance/Measure attached hereto as Exhibit “A”, to the Clerk of the Board of Supervisors of Los Angeles County and to the Registrar of Voters of Los Angeles County.

**SECTION 9. CEQA.** The City Council hereby finds and determines that the ballot measure relates to organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment, and therefore is not a project within the meaning of the California Environmental Quality Act (“CEQA”) and the State CEQA Guidelines, section 15378(b)(5).

**SECTION 10. Severability.** If any provision of this Resolution or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Resolution which can be given effect without the invalid provision or application, and to this end the provisions of this Resolution are severable. The City Council hereby declares that it would have adopted this Resolution irrespective of the invalidity of any particular portion thereof.

**SECTION 11. Effective Date of Resolution.** This Resolution shall take effect immediately upon its adoption.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Avalon, California, at a Regular meeting held on this 12th day of January, 2018.

Ayes: Mayor Marshall, Councilmembers Olsen, Cassidy, Hernandez, and Sampson

Noes: None

Absent: None

Abstain: None



Ann H. Marshall, Mayor

**ATTEST:**



Denise A. Radde, City Clerk

**EXHIBIT "A"**

**TEXT OF INITIATIVE MEASURE TO IMPOSE SPECIAL TAX ON CRUISE SHIP,  
FERRY, AND AIR CRAFT PASSENGERS ARRIVING TO OR DEPARTING FROM  
CITY OF AVALON**

**[attached behind this page]**



**AN ORDINANCE OF THE PEOPLE OF THE CITY OF AVALON IMPOSING A SPECIAL TAX ON ALL PASSENGERS LANDING, DISCHARGING, LOADING, OR EMBARKING ON, TO, OR FROM CITY HARBOR FACILITIES, AND TAKING OTHER ACTIONS RELATING THERETO**

THE PEOPLE OF THE CITY OF AVALON DO ORDAIN AS FOLLOWS:

Section 1. **Amendment to Municipal Code.** Article 6 is added to the Avalon Municipal Code as follows:

**"Sec. 10-2.601 Levy of Special Tax.**

In addition to the fees imposed pursuant to Section 10-2.402 of the Avalon Municipal Code, a special tax shall be levied for the purpose of financing the infrastructure replacement, debt financing, land procurement for a new facility, implementation of new programs, and associated administrative and financing costs of the Catalina Island Medical Center (the "Center"), or any component thereof, by the City of Avalon as follows, and at the following rate and methodology:

except as otherwise specifically provided in this article, for all cruise ships, cross-channel carriers and aircrafts carrying passengers for hire or charter, whether operating under the authority of the California Public Utilities Commission or not, which land, discharge, load, or embark passengers on, to, or from such City harbor facilities or any facilities in the City used by aircrafts for landing, discharging, loading, or embarking passengers, One Dollar (\$1.00) for each passenger so landed, discharged, loaded or embarked. Except as otherwise provided in paragraph (6) below, for all cruise ships, the special tax as laid out in subsection (a) above, which special tax shall be levied upon one hundred (100%) percent of the manifest passengers, excluding persons employed upon the vessel. As used in this section "cruise ship" means a vessel which lists Avalon as a port-of-call and which anchors so as to permit passengers to disembark and to return to the same vessel. As used in this section, "aircraft" includes helicopters and sea planes.

The special tax authorized by the provisions of this section shall be in addition to any rents paid to the City, and all other taxes, fees, license and permit fees, if any, including those paid pursuant to the provisions of Section 10-2.402 and 10-2.410 of the Avalon Municipal Code. There shall be a credit of taxes paid, if any, pursuant to the provisions of Title 3, Article 3, Chapter 3 and Section 3-1.204 subsections (b) through (f) of the Avalon Municipal Code.

**Sec. 10-2.602 Passengers: Gross Receipts: Statements.**

(a) All cruise ships, cross-channel carriers and aircrafts carrying passengers for hire or charter and required to pay the special tax set forth in Section 10-2.601 of the Avalon Municipal Code shall submit to the City of Avalon Harbor Master or his deputy and to the City of Avalon Finance Director a

monthly statement of the number of passengers landed, discharged, loaded, or embarked and shall pay the special tax provided for in said section. Such statement shall be filed before the tenth day of the month immediately following each subject month.

(b) The business user shall submit to the Director of Finance, for his guidance in ascertaining the amount of the special tax to be paid, a monthly written statement, on a form to be provided by the Director of Finance under oath or penalty of perjury, setting forth such information concerning the user's passenger counts derived from such use during the preceding month as may be required by the Director of Finance to enable him to ascertain the special tax to be paid by such business user pursuant to the provisions of this article. Such statements shall be filed on or before the last day of each calendar month for the preceding calendar month.

(c) No statement shall be conclusive on the City but shall be subject to audit and verification by the Director of Finance, his deputies, or authorized agents of the City, who are hereby authorized to examine, audit, and inspect such books and records as may be necessary to verify or ascertain the amount of the special tax due.

(d) All statements or estimates required by this Section shall be confidential and are hereby declared not to be public records. Any unauthorized disclosure or use of such information by any officer, agent, or employee of the City shall be subject to the penalty provisions of the Avalon Municipal Code in addition to any other penalties provided by law.

(e) All persons engaged in business subject to the provisions of this article are required to keep such books and records as are necessary for the City to determine upon audit thereof the amount of special taxes due and to permit examination thereof for the purposes of this section for a minimum of three years. Where the City determines that a person engaged in business subject to the provisions of this article does not keep such books and records as are necessary for the City to determine the amount of special taxes due, it may direct the business as to the types of books and records which shall be kept by such business thereafter. Failure to thereafter keep such books and records as directed and failure to submit to an audit shall be grounds for suspension or revocation of a waterside permit as provided in Section 10-2.415, or other applicable license or permit held by such business for the purpose of operating such business in the City.

#### **Sec. 10-2.603 Number of Passengers: Records: Audit.**

All cruise ships, cross-channel carriers and aircrafts shall have and maintain an accurate written record of all passengers landed, discharged, loaded, or embarked, which record shall be made available on demand to the City or its duly authorized agent for audit, as provided for in Section 10-2.602. If such audit shall disclose an error in such record, which error would require an additional payment to the City,



the owner or operator of such cruise ship, cross-channel carrier or aircraft shall pay to the City the additional fees disclosed thereby and the reasonable cost of such audit, plus a sum equal to ten (10%) percent of the additional amount of special taxes found due and owing by such audit.

**Sec. 10-2.604 Inspections by Harbor Master.**

The Harbor Master or his deputy shall, from time to time, make an actual physical check of the passengers actually landing, discharging, loading, or embarking against the statement of the number of passengers landed, discharged, loaded, or embarked furnished to him by the owner or operator of such cruise ships, cross-channel carriers or aircrafts.

**Sec. 10-2.605 Special Taxes: Due Date: Delinquencies.**

All special taxes required by the provisions of this article shall become due and shall be paid on or before the last day of the month immediately following each calendar month. If any such amount so payable is not paid by the last day of the immediately following month, there shall be added to such amount interest payable at the rate of one-half (1/2) of one percent per month on the amount of the special tax for each month, or portion thereof, from the date the special tax is first delinquent. If such special tax is delinquent and unpaid, there shall in addition be added thereto a one-time penalty in the amount of ten (10%) percent of the amount of special tax, computed from the date the special tax first becomes delinquent.

**Sec. 10-2.606 Special Taxes: Delinquencies: Collection by Court Action.**

Any and all amounts due pursuant to the provisions of this article may be collected by the City by means of an action brought in any court having jurisdiction thereof, in which action the defendant shall be required to pay the costs of such action, together with such attorneys' fees as the court may find to be reasonable.

**Sec. 10-2.607 Special Taxes: Nonpayment Unlawful.**

It shall be unlawful for any captain, master, or other person in charge or control of any cruise ship, cross-channel carrier or aircraft, to land or discharge, or to attempt to land or discharge, any passengers at, on, or over the City facilities without the payment of the special tax required by this article.

**Sec. 10-2.608 Appeals.**

Any captain, master, or other person in charge or control of any cruise ship, cross-channel carrier or aircraft aggrieved by any decision of the Director of Finance or the Harbor Master with respect to the amount of such special tax, interest, and penalties, if any, may appeal to the Council by filing a notice of appeal with the City Clerk within fifteen (15) days after the service or mailing of the

determination of the tax due. The Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such operator at his last known place of address. The findings of the Council shall be final and conclusive and shall be served upon the appellant in the manner prescribed in this article for the service of a notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

**Sec. 10-2.609 Deposit of Special Tax Proceeds; Use for Catalina Island Medical Center Expenses Only.**

The proceeds of the special tax shall be deposited into an account created exclusively for that purpose and designated the "Catalina Island Medical Center Improvement Fund" and shall be held, separate and apart from other funds of the City. Funds deposited in such account shall be used for the exclusive purposes of financing the infrastructure replacement, debt financing, land procurement for a new facility, implementation of new programs of the Catalina Island Medical Center, or any component thereof, and for any financing costs or other administrative costs incurred by the Catalina Island Medical Center or the City on behalf of the Catalina Island Medical Center in connection therewith. Proceeds of the special tax may not be used for any other purposes except as provided for herein.

**Sec. 10-2.610 Annual Report.**

Pursuant to California Government Code, Section 50075.3, the Director of Finance of the City shall file a report with the Council at least annually that contains both of the following:

- (a) The amount of funds collected from the special tax and expended;  
and
- (b) The status of any project required or authorized to be funded by the special tax.

**Sec. 10-2.611 Effect on Other Taxes, Levies, Fees, Charges, Assessments or other Exactions of Any Kind.**

The special tax shall be in addition to any other taxes, levies, fees, charges, assessments, or other exactions of any kind imposed by the City. Neither the special tax imposed pursuant to this article, nor any provision contained herein, are in any way intended to (and shall not be construed to) reduce, discount, eliminate, create any exemption, or otherwise affect any tax, levy, fee, charge, assessment, or other exaction of any kind imposed by the City or to be imposed in the future."

Section 2. **Severability.** If any section, subsection, part, clause, sentence or phrase of the Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, the validity of the remaining portions of the Ordinance, the

application thereof, and the special tax imposed shall not be effected thereby but shall remain in full force and effect, it being the intention of the voters to adopt each and every section, subsection, part, clause, sentence or phrase, regardless of whether any other section, subsection, part, clause, sentence or phrase or the application thereof is held to be invalid or unconstitutional.

Section 3. **Effective Date.** This Ordinance and the levying of the special tax described herein shall be effective ten days after the date on which the Council has declared that the voters of the City have approved this Ordinance by a vote of not less than two-thirds of the votes cast by the electors voting on the special tax set forth in this Ordinance. Otherwise, this Ordinance shall be of no force and effect.

Section 4. **Policies and Procedures.** The City Manager is hereby authorized to enter into any agreement with the Center to establish policies and procedures for disbursement of special tax revenues provided, however, that such policies and procedures may not authorize use of the special tax revenues for purposes not provided herein, and shall not increase the special tax rate above the rate authorized herein.

Section 5. **Further Action.** The City Clerk of the Council shall certify to the passage and adoption of this Ordinance and shall cause a certified copy of the full text of the Ordinance to be posted.


STATE OF CALIFORNIA       )  
COUNTY OF LOS ANGELES   ) SS.  
CITY OF AVALON               )

I, DENISE A. RADDE, CITY CLERK OF THE CITY OF AVALON, do hereby certify that the foregoing is a true and correct copy of Resolution No. 17- 39, and was duly passed, approved, and adopted by the Avalon City Council at its regular meeting of January 12, 2018, by the following vote:

Ayes:           Mayor Marshall, Councilmembers Olsen, Cassidy, Hernandez, and Sampson.  
Noes:           None  
Absent:        None  
Abstain:       None

and that the same has not been amended nor repealed.

Dated this 12<sup>th</sup> day of January, 2018.

  
\_\_\_\_\_  
Denise A. Radde, City Clerk  
City of Avalon, California